

No. 14929

**United States
Court of Appeals**
for the Ninth Circuit

HAROLD G. BAUER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

**Appeal from the United States District Court for the
Western District of Washington,
Northern Division.**

No. 14929

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HAROLD G. BAUER,

Appellant,

vs.

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Appellee.

Transcript of Record

**Appeal from the United States District Court for the
Western District of Washington,
Northern Division.**

NAMES AND ADDRESSES OF COUNSEL

GERALD D. HILE, ESQ.,
4506 California Ave.,
Seattle 16, Washington,
Attorney for Appellant.

CHARLES P. MORIARTY, and
WILLIAM A. HELSELL,
1012 U. S. Court House,
5th at Madison,
Seattle 4, Washington,
Attorneys for Appellee.

United States District Court, Western District of
Washington, Northern Division

No. 49163

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HAROLD G. BAUER,

Defendant.

INDICTMENT

The Grand Jury charges:

Count I

That on or about the 12th day of February, 1954, at Seattle, within the Northern Division of the Western District of Washington, the defendant, Harold G. Bauer, then and there not being a person permitted to hold in his possession or retain a legal and equitable interest in gold bullion by any regulation issued by the Secretary of the Treasury and approved by the President of the United States, did then and there wilfully, unlawfully and knowingly hold in his possession and retain a legal and equitable interest in gold bullion in excess of the value of One Hundred Dollars (\$100.00) and in excess of Thirty-Five (35) fine Troy ounces, to wit, approximately Fifteen (15) crucible-shaped gold ingots of a total gross weight of approximately Three Hundred Thirty-Eight and 90/100 (338.90) ounces, situated in the United States and owned by a person subject to the jurisdiction of the United States, without a

duly issued license authorizing and permitting him to so hold in his possession and retain a legal and equitable interest in said gold bullion.

All in violation of Title 12, U.S.C., Section 95(a), and Executive Order 6260, as amended.

A True Bill.

/s/ WALLACE L. COUSENS,
Foreman.

/s/ CHARLES P. MORIARTY,
United States Attorney.

/s/ WILLIAM A. HELSELL,
Assistant United States Attorney.

Bail: \$5000.

[Endorsed]: Filed March 23, 1955.

[Title of District Court and Cause.]

WARRANT FOR ARREST OF DEFENDANT
(Rev. 7-52)

To any United States Marshal or any other authorized officer:

You are hereby commanded to arrest Harold G. Bauer and bring him forthwith before the United States District Court for the Western District of Washington, in the city of Seattle, to answer to an Indictment charging him with possession and retaining of legal and equitable interest in gold bullion in

excess of value of \$100.00, etc., in violation of Title 12, USC., Section 95(a), and Executive Order 6260, as amended.

Dated at Seattle, Wash., on March 23, 1955.

MILLARD P. THOMAS,
Clerk.

By /s/ TRUMAN EGGER,
Deputy Clerk.

Bail fixed at \$5000.00.

Return

Received the within warrant the 23rd day of March, 1955, and executed same by the arrest of Harold Bauer on March 28, 1955.

/s/ WM. LARSON,
United States Marshal.

Received March 23, 1955.

[Endorsed]: Filed March 28, 1955.

[Title of District Court and Cause.]

ARRAIGNMENT AND PLEA

Now on this 28th day of March, 1955, this cause comes on before the Court for arraignment and plea with William A. Helsell acting as attorney for the United States, and Gerald D. Hile attorney for defendant, who is present. Mr. Helsell moves the in-

dictment, heretofore kept secret, now be published and it is so ordered. Defendant has been furnished with a copy of the indictment, understands the nature of the charge, and waives the reading of the indictment. Defendant enters a plea of Not Guilty and Mr. Hile moves for 3 weeks to move against the indictment, which motion is granted. Mr. Hile further moves that the defendant be allowed to remain at large on his Personal Recognizance bond. There being no objections by the Government, it is so granted. Mr. Hile further moves that the defendant be allowed to leave the jurisdiction of this Court for the purpose of his employment, and the Court directs that a minute order be entered so ordering.

[Title of District Court and Cause.]

APPEARANCE

To the Clerk of the Above-Entitled Court:

Please enter my appearance as attorney of record for the defendant in the above-entitled cause.

/s/ GERALD D. HILE,

Attorney of Record for
Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed April 15, 1955.

[Title of District Court and Cause.]

MOTION TO DISMISS

Defendant moves the above-entitled cause be dismissed for the reason that the Indictment of the Grand Jury therein fails to allege facts sufficient to constitute a crime by defendant against the laws of the United States of America.

/s/ GERALD D. HILE,
Attorney of Record for
Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed April 15, 1955.

[Title of District Court and Cause.]

HEARING

Now on this 16th day of May, 1955, William A. Helsell is present as attorney for plaintiff and Gerald D. Hile is acting as attorney for defendant. The matter comes on before the Court for further hearing on defendant's motion to dismiss. Arguments are heard and the motion is denied. Briefs (from former case) are returned to counsel. Trial date of July 12, 1955, is stricken and the cause is now set for trial on July 26, 1955.

[Title of District Court and Cause.]

DOCKET ENTRIES

1955

July 26—Ent. Record of Trial by Jury (1st day).
Exhibits.

July 27—Ent. Record of Trial by Jury (2nd day).
Exhibits.

July 28—Ent. Record of Trial by Jury (3rd day).
Exhibits.

Sept. 20—Filed Notice of Appeal in duplicate.

[Title of District Court and Cause.]

VERDICT

We, the Jury in the Above-Entitled Cause, Find the Defendant, Harold G. Bauer, is guilty as charged in the Indictment.

/s/ WILLIAM H. GRAHAM,
Foreman.

Dated: July 28th, 1955.

[Endorsed]: Filed July 28, 1955.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

The defendant, Harold G. Bauer, moves the Court to grant him a new trial for the following reasons:

1. The Court erred in denying defendant's challenge to the sufficiency of the evidence at the conclusion of the Government's case in chief.

2. The Court erred in denying defendant's motion for acquittal made at the conclusion of all the evidence.

3. The verdict is contrary to the weight of the evidence.

4. The verdict is not supported by substantial evidence.

5. The Court erred in sustaining objections to questions addressed to the witness, William B. Cline, concerning the Gold Reserve Act.

6. The Court erred in sustaining the objection to the admission in evidence of a copy of the Treasury Gold Regulations.

7. The Court erred in sustaining the objection to the question addressed to the witness, Richard Kauffman, concerning the defendant's criminal record.

8. The Court erred in charging the jury and in refusing to charge the jury as requested.

9. The Court erred in instructing the jury as to the essential elements of the offense, which the Government was required to prove.

10. The Court erred in refusing to permit counsel for the defendant to argue to the jury the Government's failure to prove all the allegations contained in the indictment.

11. The defendant was substantially prejudiced and deprived of a fair trial by reason of the fact

that the Government changed its theory of the case from that which it alleged in the indictment, thereby seriously misleading the defendant in the preparation of his defense.

/s/ GERALD D. HILE,
Attorney for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed August 2, 1955.

[Title of District Court and Cause.]

MOTION IN ARREST OF JUDGMENT

The defendant moves the Court to arrest the judgment for the reason that the indictment does not state facts sufficient to constitute an offense against the United States.

/s/ GERALD D. HILE,
Attorney for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed August 2, 1955.

[Title of District Court and Cause.]

JUDGMENT AND SENTENCE

Now on this 19th day of September, 1955, this cause comes on before the Court for hearing on motion of defendant in arrest of judgment, and motion

for a new trial. Also for imposition of judgment and sentence on verdict of Guilty as charged in the Indictment. Motions are denied.

The cause is called, defendant Harold G. Bauer is present and with his counsel, Gerald D. Hile. Edward J. McCormick, Jr., represents the Government.

Judgment and sentence are pronounced. Later, the written Judgment, Sentence and Commitment, as orally pronounced, is signed in the presence of the defendant. Stay of execution of this judgment and sentence is granted until September 22, 1955, to permit defendant time within which to file an appeal. Defendant is to remain on personal recognizance bond in the sum of \$5,000.

United States District Court, Western District of
Washington, Northern Division

No. 49163

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HAROLD G. BAUER,

Defendant.

JUDGMENT, SENTENCE AND
COMMITMENT

On this 19th day of September, 1955, the attorney for the Government, and the defendant, Harold G. Bauer, appearing in court and being represented by

Gerald D. Hile, his attorney, the Court finds the following:

That prior to the entry of his plea, a copy of the Indictment was given to the defendant and the defendant entered a plea of not guilty and a trial was held, resulting in a verdict of guilty as to Count I thereof; that the Probation Officer of this District has made a presentence investigation and report to the Court, now, therefore,

It Is Adjudged that the defendant has been convicted by jury verdict and is guilty of the offense of violation of Title 12, U.S.C., Section 95(a), and Executive Order 6260, as amended, as charged in Count I of the Indictment, there being only one count in the Indictment herein, and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged in Count I and is convicted.

It Is Adjudged and Ordered that as to Count I the defendant be committed to the custody of the Attorney General of the United States for confinement in King County Jail at Seattle, Washington, or in such other like institution as the Attorney General of the United States or his authorized representative may by law designate, for the period of Ninety (90) Days.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of this Judgment, Sentence and Commitment to the United States Marshal or other qualified officer, and that said copy serve as the commitment of the defendant.

Done in Open Court this 19th day of September, 1955.

Stay of Execution of this judgment and sentence is granted until September 22, 1955, to permit defendant time within which to file an appeal.

/s/ WILLIAM J. LINDBERG,
United States District Judge.

Approved and Presented by:

/s/ WILLIAM A. HELSELL,
Assistant United States Attorney.

(Unlawful possession quantity of gold ingots.)

[Endorsed]: Filed September 19, 1955.

Entered September 20, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant—Harold G. Bauer,
3623 - 43rd Ave., W., Seattle, Washington.

Name and address of appellant's attorney—Gerald
D. Hile, 4502 California Avenue, Seattle, Wash-
ington.

Offense—Possession of gold bullion in violation of Title 12, U.S.C.A., Sec. 95(a) and Executive Order No. 6260 as amended.

Judgment and Sentence entered September 19, 1955, sentencing appellant to 90 days in King County Jail.

Appellant is on bail.

I, the above-named appellant, hereby appeal to the U. S. Court of Appeals for the 9th Circuit from the above-stated judgment and sentence.

Dated this 20th day of September, 1955.

/s/ HAROLD G. BAUER,
Appellant.

[Endorsed]: Filed September 20, 1955.

[Title of District Court and Cause.]

PERSONAL RECOGNIZANCE
BOND ON APPEAL

Know All Men by These Presents:

That I, Harold G. Bauer, as principal, am held and firmly bound unto the United States of America in the sum of Five Thousand Dollars (\$5,000.00) to be paid to the United States of America and to be levied of me and my lands, goods, chattels and tenements, to which payment, well and truly to be made, I bind myself, my heirs, my executors and adminis-

trators by these presents, sealed with my seal and dated the 20th day of September, 1955.

The condition of the above recognizance is such that lately at a District Court of the United States for the Western District of Washington, Northern Division, in a suit pending in said Court between the United States of America, plaintiff, v. Harold G. Bauer, defendant, Cause No. 49163, a judgment and sentence was rendered against the said Harold G. Bauer, defendant, and the said Harold G. Bauer having filed in the Clerk's office of said Court, Notice of Appeal in duplicate from said Judgment and Sentence in said suit, and said appeal is now regularly pending in the United States Court of Appeals in and for the Ninth Circuit Court, to be holden at San Francisco, California,

Now, therefore, if the said Harold G. Bauer surrender himself in execution of the judgment, upon it being affirmed or modified, or upon the appeal being dismissed, or that in case of the judgment being reversed and the cause remanded for new trial, he appear in the Court to which said Cause may be remanded for a new trial and render himself amenable to any and all lawful orders and process in the premises, then this recognizance shall be void, otherwise to remain in full effect and virtue. This recognizance is deemed and construed to contain the "express agreement" for summary judgment, and execution thereon, mentioned in Rule 34 of the District Court.

/s/ HAROLD G. BAUER.

Approved:

/s/ WILLIAM J. LINDBERG,
U. S. District Judge.

Approved and acknowledged before me the day
and year first above written.

/s/ WILLIAM A. HELSELL,
Assistant United States Attor-
ney.

[Endorsed]: Filed September 20, 1955.

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH AP-
PELLANT INTENDS TO RELY ON AP-
PEAL

Appellant intends to rely upon the following
points on appeal:

1. The Indictment does not state facts sufficient
to constitute an offense against the United States.

2. Executive Order 6260, as amended, was not in
force on February 12, 1954, the date of the alleged
offense.

3. It was not a criminal offense against the
United States to possess gold bullion on February
14, 1954, the date of the alleged offense.

/s/ GERALD D. HILE,
Attorney for Appellant,
Harold G. Bauer.

Receipt of copy acknowledged.

[Endorsed]: Filed October 12, 1955.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 10 of the United States Court of Appeals for the Ninth Circuit, and Rule 39(b)(1) of the Federal Rules of Criminal Procedure, and designation of counsel, I am transmitting herewith the following original papers in the file dealing with the action, excluding exhibits, together with true copies of certain journal and docket entries, as the record on appeal from the Judgment, Sentence and Commitment filed Sept. 19, 1955, to the United States Court of Appeals for the Ninth Circuit at San Francisco, to wit:

1. Indictment, filed March 23, 1955.
3. Bench Warrant with Marshal's Return thereon, filed 3-28-55. Arraignment and Plea, Journal entry, March 28, 1955.
4. Appearance of Gerald D. Hile for Defendant, filed 4-15-55.
5. Motion of Deft. to Dismiss, filed 4-15-55. Order Denying Motion to Dismiss, Journal entry, 5-16-55. Record of Trial by Jury (Docket entries, July 26, 27, 28, 1955).
19. Verdict, filed July 28, 1955.

23. Motion for New Trial, filed Aug. 2, 1955.

24. Motion in Arrest of Judgment, filed Aug. 2, 1955. Order Denying Motions in Arrest of Judgment and for New Trial. (Journal entry Sept. 19, 1955.)

25. Judgment, Sentence and Commitment, filed Sept. 19, 1955.

26. Notice of Appeal, filed Sept. 20, 1955. Docket entry showing Notice of Appeal in duplicate, 9-20-55.

27. Bond on Appeal, filed Sept. 20, 1955.

30. Statement of Points on Which Appellant Intends to Rely on Appeal, filed Oct. 12, 1955.

31. Appellant's Designation of Record on Appeal, filed 10-12-55.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle this 18th day of October, 1955.

[Seal]

MILLARD P. THOMAS,
Clerk;

By /s/ TRUMAN EGGER,
Chief Deputy.

[Endorsed]: No. 14929. United States Court of Appeals for the Ninth Circuit. Harold G. Bauer, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed November 1, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 14929

HAROLD G. BAUER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S DESIGNATION OF RECORD
TO BE PRINTED AND ADOPTION OF
STATEMENT OF POINTS ON WHICH
APPELLANT INTENDS TO RELY

Appellant hereby adopts and designates the following as the record to be printed herein:

All of the items numbered 1 to 31, inclusive, of the typewritten Certificate of the Clerk of the U. S. District Court to Record on Appeal in this cause, dated October 18, 1955, and made by Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, Northern Division, and on file with the above-entitled Court.

Appellant further adopts as his Statement of Points on which Appellant Intends to Rely herein the said Statement of said Points heretofore filed with said District Court on October 12, 1955, by Appellant, being item No. 30 of said Certificate of Clerk, United States District Court, to Record on Appeal, on file with the above court.

/s/ GERALD D. HILE,

Attorney for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed November 26, 1955.